

**Sheik KetabuddIn and ors. Vs. Nafar Chandra Pattok and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/862314](http://sooperkanoon.com/862314)

**Court :** Kolkata

**Decided On :** Feb-10-1926

**Reported in :** AIR1927Cal230

**Appellant :** Sheik KetabuddIn and ors.

**Respondent :** Nafar Chandra Pattok and ors.

**Judgement :**

**B.B. Ghose, J.**

1. The only question argued on behalf of the appellants in this case is that the finding of fact arrived at by the lower appellate Court was based partly on evidence which is not admissible under the law. This objection refers to three documents Exs. 3, 5 and 6 which dealt with lands lying on the different boundaries of the land in dispute. They have been used for the purpose of showing that in describing the boundaries of those lands the land in dispute in the present suit has been described as being in the possession of the plaintiff which the learned advocate for the appellants contends is not permissible under the law. His contention is that those documents cannot be taken into consideration and as the judgment of the lower appellate Court on the facts depends partly on a consideration of those documents this judgment should be set aside and the case sent back for decision on the evidence excluding these three documents. The question of the admissibility of such documents may be considered in three aspects. The first is

where the executant of a document is called as a witness and he gives his evidence and in support of that he produces a document executed by him. In such a case it is conceded that the document would be admissible under Section 157 of the Evidence Act as corroborative of the evidence given by the witness in the witness box. In the present case this has happened with regard to Ex. 6 and there is no question that this was rightly admitted in evidence. The second aspect of the question arises where the executants are alive and do not give their evidence in the case. In such cases there is a strong body of opinion that such documents are not admissible either under Section 11 or 18 of the Evidence Act. This has not been done in the present case. The third case is, where the executants are dead, whether any such documents are admissible under Section 62 of the Evidence Act or not. That such documents are admissible under Section 32 of the Evidence Act has been held in a long line of cases in different Courts in India. There is a question that under the English Law a statement in such documents would be admissible. It is unnecessary to cite any English case other than the leading case of *Higham v. Ridgway* [1808] 2 Sm. L.C. 307. Whether such evidence is admissible under the Evidence Act was considered in favour of its admissibility in several cases the earliest of which is *Leelanund Singh v. Mt. Lakhputee* [1874] 22 W.R. 231. This case was elaborately discussed and followed in the case of *Ningawa v. Bharmappa* [1899] 23 Bom. 63, which was again followed in the Bombay High Court, in case of *Haji Bibi v. H.H Sir Sultan Mahomed Shah* [1909] 11 Bom. L.R. 409, and in our Court in the case of *Abdullah v. Kunj Behary Lal* [1911] 16 C.W.N. 252. These cases were followed in Allahabad in the case of *Natwar v. Alkhu* [1913] 11 A.L.J. 139, and all these cases were subsequently followed in this Court in *Imri Chamar v. Sirdhari Pandey* [1911] 15 C.L.J. 7, and in the case of *Ambar Ali v. Lutf Ali* [1918] 45 Cal. 159. It is contended, however, by the learned advocate for the appellants that Section 32 of the Evidence Act does not really apply to statements in such documents and his contention is supported by the case in *Pramatha Nath Choudhuri v. Krishna Chandra Bhattacharjee* : AIR1924 Cal1067 . The other cases cited by him do not really touch the question. In the case of *Soroj Kumar Acharji Chowdhuri v. Umed Ali Howladar* A.I.R. 1922 Cal. 251, which is purported to have been followed in the case of *Radha Krishna Marwari v. Sarbeswar Nag* : AIR1925 Cal684 , and in the case of *Chooni Lal*

Khemani v. Nilmadhab Barik : AIR1925 Cal1034 , the question of the admissibility of such a document under Section 32 of the Evidence Act has not at all been considered. These latter cases, therefore, do not appear to be of any assistance in the decision of the present question. The matter stands thus. There is a strong body of authorities in support of the proposition that under Section 32 of the Evidence Act these documents are admissible and there is a single case in Pramatha Nath Choudhuri v. Krishna Chandra Bhattacharjee : AIR1924 Cal1067 , which takes a Contrary view as to the applicability of Section 32 of the Evidence Act to such a case is this. It is, however, unnecessary for us to state in this case whether we should follow the line of cases which held that statements in documents under such circumstances are admissible under the law or take the contrary view following the case in Pramatha Nath Choudhuri v. Krishna Chandra Bhattacharjee : AIR1924 Cal1067 . We were asked to make a reference to a Full Bench with regard to this question but we do not think that it is at all necessary to do so having regard to the circumstances of this case. We think that these documents are admissible in the present case under the following circumstances. The persons who are the owners of the lands on the boundaries of a land in dispute have been examined as witnesses in the case and they proved that they had purchased the lands which they held by transfers under Exs. Nos. 3 and 5. Those documents are certainly admissible to show that they have purchased these lands. These are corroborative documents of the oral testimony of the witnesses as regards their ownership and once being admissible in evidence the Court was entitled to look into the contents of the documents and make such use of the contents as it thought fit because there is no provision in the Evidence Act which says that this cannot be done. Under such circumstances we think that it cannot be said that the lower appellate Court acted erroneously in making use of those documents.

2. On this ground this appeal fails and is dismissed with costs.

**Panton, J.**

3. I agree.

